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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARK NUNEZ, et al.,

4 Plaintiffs,

5 v.

11 Civ. 5845 (LTS)

6 CITY OF NEW YORK, et al.,

Remote Conference

7 Defendants.

8 -----x

9 New York, N.Y.

10 May 24, 2022

2:30 p.m.

11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 District Judge

14 APPEARANCES

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24 STEVEN J. MARTIN, Monitor
25 ANNA F. FRIEDBERG, Deputy Monitor

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(The Court and all parties present remotely)

THE DEPUTY CLERK: This case is Mark Nunez, et Al v City of New York, et al. The Honorable Chief Judge Laura Taylor Swain presiding.

THE COURT: Good afternoon. We are here today for a status conference. Today's conference was scheduled to discuss the City and the Department of Corrections' proposed action plan filed on May 17th, 2022 at Docket No. 454 as well as the status of negotiations and any areas of disagreement that exist among the parties about the content of the proposed plan.

I'm now going to ask the video participants to state their appearances, beginning with the monitor and the deputy monitor.

MR. MARTIN: Yes. Hello, your Honor. My name is Steve J. Martin, the monitor.

THE COURT: Good afternoon, Mr. Martin.

MR. MARTIN: Good afternoon.

MS. FRIEDBERG: Good afternoon, your Honor. My name is Anna E. Friedberg, the deputy monitor.

THE COURT: And now, counsel for the plaintiffs.

MS. WERLWAS: Good afternoon, your Honor. Mary Lynne Werlwas of the Legal Aid Society Prisoners' Rights Project for the plaintiffs. And with me in the office is Madison Levin from the Legal Aid Society. And on the audio is Kayla Simpson of the Legal Aid Society.

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1 THE COURT: Good afternoon, Ms. Werlwas, Ms. Levin and
2 Ms. Simpson.

3 Ms. Greenberger.

4 MS. GREENBERGER: Good afternoon, your Honor. This is
5 Debra Greenberger. I have joined with me on the phone my
6 colleagues, Jonathan Abedy and Nairuby Beckles.

7 THE COURT: Good afternoon, Ms. Greenberger, Mr. Abedy
8 and Ms. Beckles.

9 And now from the United States Attorney's Office for
10 the Southern District of New York.

11 MR. POWELL: Good afternoon, your Honor. My name is
12 Jeffrey Powell, and I'm appearing on behalf of the government.
13 And I'm joined today by AUSA Lara Eshkenazi as well.

14 THE COURT: Good afternoon, Mr. Powell and
15 Ms. Eshkenazi.

16 Counsel for the City and the Department of
17 Corrections.

18 MS. JOYCE: Good afternoon, your Honor. Kimberly
19 Joyce from the New York City Law Department for the City of New
20 York. I have my cocousenl, Cheryl Neufeld sitting off camera
21 to my left.

22 MR. MR. MOLINA: Louis A. Molina, commissioner for the
23 department of corrections.

24 THE COURT: Good afternoon Mr. Commissioner and good
25 afternoon Ms. Joyce and Ms. Neufeld.

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1 I greet any other members of the counsel or public who
2 may be listening in since this is a public proceeding. I ask
3 counsel who are on video keep their audio muted when they are
4 not speaking. I see that you have all done that. Thank you
5 very much.

6 I also remind everyone, both listeners and video
7 participants, that neither recording or retransmission of any
8 part of this proceeding is permitted. That is a provision of
9 the Court's January 19, 2021 standing order and it is also
10 national judicial conference policy.

11 I'll be calling on each speaker. Each time that you
12 speak, please make sure that you have been identified by name
13 for clarity of the record and for the benefit of those who only
14 have audio access. Please don't interrupt each other or me
15 during the conference. If we interrupt each other, it's
16 difficult to create an accurate transcript. But having said
17 that, and as usual, I apologize in advance for breaking the
18 rule because I may interrupt if I have questions. If anyone
19 has any difficulty hearing me or another participant, please
20 say something right away.

21 I have a couple of introductory remarks.

22 We came together in this case on April 26th, 2022 for
23 a conference to discuss the monitoring team's special report
24 issued on March 16th, 2022, which described the patently unsafe
25 conditions in the jails, provided an overview of the

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1 foundational issues currently facing the City and the
2 Department and laid out the monitoring team's proposed
3 recommendations for areas of focus.

4 The commissioner attended the conference and expressed
5 his commitment to making effective changes, pointing to certain
6 measures that had already been implemented. At that April 26th
7 conference, the monitor informed the Court that the monitoring
8 team was working with the City and the Department to develop an
9 implementation plan to address the ongoing crisis at Rikers.

10 After much frank discussion, the Court directed the
11 monitoring team to file the proposed plan within three weeks
12 time, by May 17th, and encouraged the City, the Department and
13 the monitoring team to work in a focused way to develop
14 specific, tangible steps that the City and the Department could
15 take in the immediate term to address the unstable and unsafe
16 conditions in the jail, as well as longer term, structural
17 problems that exist.

18 The Court thanks the monitoring team and the
19 defendants for their timely submission of a proposed action
20 plan, which incorporates tangible steps that the City and the
21 Department have agreed to take in order to ameliorate the
22 current crisis, also addresses the allocation of responsibility
23 and directive of specific timelines for compliance. The
24 proposed action plan and explanatory letter from the monitoring
25 team are filed at Docket No. 454.

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1 The Court has also received and reviewed a May 23rd,
2 2022 status update from the monitoring team, which is filed at
3 Docket No. 458. The monitoring team informs the Court that the
4 City and the Department have begun working toward the
5 implementation of several elements of the proposed action plan
6 to be discussed in greater detail at today's conference.

7 The monitoring team also informs the Court that the
8 parties have engaged in numerous discussions over the past week
9 about whether the proposed action plan is sufficiently specific
10 about how legal and other structural issues that defendants
11 have previously cited as barriers to effective reform will be
12 overcome in order to implement the measures outlined in the
13 proposed action plan. To put it plainly, the commissioner, the
14 City and the Department must have the necessary tools and
15 authority to support the plan's implementation in a meaningful
16 and timely manner. Confirming that this is the case and
17 ensuring that the plan reflects the accurate scope of resources
18 and authority is of the utmost importance.

19 I'll now turn to the parties for their views on where
20 we are now, what next steps can be taken, and the timetable on
21 which we can move rapidly to improve the safety situation at
22 Rikers in particular. And I will begin by calling on the
23 monitor and the deputy monitor.

24 MR. MARTIN: Thank you, your Honor.

25 I'm going to jettison my early remarks because you

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1 have done such a comprehensive job of setting out what led us
2 to this point. So I'm simply going to skip over those for the
3 sake of time.

4 Before I share my remark on the proposed action
5 plan -- which I acknowledge at the outset is not a completed
6 plan, which my deputy monitor will address in her review -- let
7 me share some observations of the current state of conditions
8 of confinement in the DOC; I'm sure the commissioner will also
9 provide. In brief, the conditions remain unsafe for both the
10 staff and detainee population. As recent as the first of this
11 month, on two consecutive day, a detainee committed suicide and
12 another detainee was severely assaulted by other detainees and
13 sustained serious of injuries, including second degree burns.
14 There's evidence that the suicide may have been preventable and
15 the detainee assault may have involved officer complicity.

16 In late April, early May, there were five stabbings,
17 slashings at five facilities. In four of these incidents,
18 security lapses, failure to supervise or untimely intervention
19 were at play. The commissioner will no doubt relate that
20 slashings and stabbings were reduced from March to April. That
21 indeed is the case. However, it is equally important to note
22 that this reduced number is still extraordinarily high and in
23 fact was the fourth highest since January of 2020.

24 As the commissioner will also no doubt relay, there
25 are some downward trends in violence metrics. For instance,

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1 from January to April of this year, use of force incidents are
2 down, as are detainee violence and assaults. Notwithstanding
3 these, the numbers are still extraordinarily high. Based on
4 the most recent data and recent site work conducted by the
5 monitoring team, the patterns in practice that generate harm
6 remain firmly in place in the DOC.

7 Let me at this point comment on some information that
8 I received late in the day yesterday regarding several
9 significant personnel changes; namely, both the chief of the
10 department and chief of facility operations, the two most
11 senior uniformed positions in the agency, will be leaving in
12 the near term. The announcement of these changes may be -- a
13 teletype at 6:30 p.m. yesterday -- will undoubtedly generate
14 consternation throughout the agency and may give rise to
15 reverberations, some of which may serve to further destabilize
16 an already troubled and unstable agency. I relate this
17 information to remind us of a potential for untintented
18 consequences for in an agency that is in a state of profound
19 flux and one that has not shown itself as especially adept of
20 managing such a disruption in the past.

21 Having said that, I want to deviate from my prepared
22 remarks again, if the Court will permit me. To give a shout
23 out to the Department of Corrections on a very topical matter,
24 I just reviewed earlier today the US Department of Justice
25 promulgation of an updated use of force policy. That policy

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1 included an affirmative duty to intervene and stop excessive
2 force. It also includes a duty to de-escalate before using
3 force.

4 Approximately five years ago, the use of force
5 directive was approved by the Court. That directive includes
6 both provisions of the new US Department of Corrections policy.
7 I think it can fairly be said that the DOC in some fashion was
8 some five years ahead of the curve on this one. I just wanted
9 to acknowledge that.

10 Now, allow me to make some general remarks on the
11 action plan before the Court and the parties. My deputy
12 monitor will momentarily articulate the reason the action plan
13 is not yet a finished product and the reasons to push it across
14 the finish line knowing time is of the essence.

15 As the monitoring team has reported ad nauseam
16 barriers and obstacles to reform during the six and one half
17 years of monitoring, this persistent problem has never been
18 more in play than it has at this moment with the action plan.
19 I have lost count of the times our office has been told by DOC
20 and representatives of city agencies that we would like to do
21 this, but we can't. The variations on this theme have been
22 endless and persistent.

23 The great reservation my deputy monitor and I have
24 with the action plan is not with the substance of it, where it
25 sets out necessary measures to our reform this function, our

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1 reluctance is directly related to the issue of a means through
2 which these necessary measures can be fully effectuated to
3 bring about sustainable reform. That is, if the City and the
4 commissioner have the necessary mechanisms readily at hand to
5 overcome legal, procedural and contractual barriers to fully
6 implement the substantive provisions of the action plan and
7 will they act or will they in a few weeks or months yet again
8 claim that some legal, contractual impediment makes it
9 impossible for them to act or they have to develop a workaround
10 that further delays reform. Six and a half years into that
11 effort, that same refrain begins to wear thin.

12 As we said in our cover correspondence to the May 17th
13 submission and reiterated in yesterday's cover correspondence,
14 the monitoring team does not believe the action plan is viable
15 without the inclusion of some narrowly drawn mechanisms to move
16 through inevitable barriers that will arise during
17 implementation of this huge and complex enterprise, which must
18 ultimately address the implicated rights and interests of the
19 plaintiff class.

20 Let me comment on barriers to reform. They may, in my
21 view, take at least three forms. First, barriers within the
22 control of the commissioner. I'll call these agency barriers,
23 the bureaucratic practices and procedures that are entrenched
24 in the agency. The current commissioner has already
25 demonstrated a willingness to tackle agency barriers and he has

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1 created some workarounds that may work. But in the final
2 analysis, these approaches are Band-Aids, not cures, and they
3 unfortunately needlessly destabilize an already precarious
4 agency.

5 The second form of barriers are those that exist
6 within the City bureaucracies, it's what my office has tabbed
7 as red tape impediments. City officials have likewise recently
8 demonstrated a commitment to tackle these barriers. While this
9 movement is certainly to be welcomed and encouraged, my office
10 has reservations about whether their commitments to act can be
11 successfully carried out in a complex bureaucratic setting
12 where time is of the essence. The parties will no doubt weigh
13 in on this issue.

14 Finally, it is the third form of barrier that gives us
15 our greatest cause for concern. Those over which the City and
16 the commissioner have no control, such as state laws,
17 regulations, labor contractual issues, DOC requirements,
18 procurement issues, contractual issues and other unanticipated
19 barriers that might divert or impede the ability to timely
20 address the requirements of the action plan and other court
21 orders. No commitment on the part of the commissioner or the
22 City, regardless of how genuine it may be, can overcome some of
23 these entrenched legal measures that will inevitably arise,
24 hence our overarching concern about the viability of the action
25 plan if the City and the department do not have a structure and

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1 the authority to manage these.

2 My deputy monitor will now speak in more detail as to
3 what the process to produce the action plan as finished product
4 in the earlier discussion on the barriers to reform.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Martin.

7 Ms. Friedberg.

8 MS. FRIEDBERG: Good afternoon, your Honor. My name
9 is Anna Friedberg, and I am the deputy monitor.

10 I echo the sentiments of the monitor and reiterate the
11 gravity of these issues that are ever present in the city
12 jails. The impact of the current conditions in the city jails
13 are real and have resulted in an ongoing risk of harm to both
14 incarcerated individuals and staff. This includes serious
15 physical injuries, severe trauma and mental anguish and, in
16 some horrifying cases, death. This has remained at the
17 forefront of the monitoring team's work and considerations on
18 next steps.

19 In my remarks, I plan to first share an overview of
20 the action plan. I then plan to address three overarching
21 issues that must be addressed to make the action plan a viable
22 pathway forward and one in which the monitoring team can
23 support and in turn provide the necessary findings to this
24 court that the action plan properly addresses the implicated
25 rights and interests. We believe the input from the Court at

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1 today's status conference is critical to help determine whether
2 a viable action plan can be developed.

3 Before I get into the substance of the action plan, I
4 must highlight one issue that implicates stakeholders beyond
5 those here today. The length of stay for an incarcerated
6 individual has increased exponentially since the beginning of
7 COVID. Over 1,500 people are currently in jail over a year and
8 almost 300 people have been in custody over three years. While
9 the City has reported it is working with local DA's offices,
10 which have heard similar refrains of backlogs, limited
11 resources and limited court capacity. While we appreciate the
12 practical reality of these issues, the current state of affairs
13 demands that local DAs and the courts work with the City to
14 find ways to address this ever increasing backlog of cases now.

15 I will now turn to the substance of the action plan.
16 The action plan has two critical components. First, it
17 identifies initiatives to be implemented as soon as possible to
18 address the current risk of harm. And second, it builds the
19 foundation for reform. I will take each in turn.

20 First, with respect to addressing immediate harm, the
21 action plan includes operational initiatives that are most
22 likely to ameliorate that harm. Some examples include using
23 technology to ensure touring of the housing units actually
24 occurs by requiring electronic touch pints within the housing
25 units to show that an officer was in fact up and physically

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1 walking around the housing unit. This is combined with more
2 captains who will be assigned to working in the facilities to
3 supervise officers on the housing units and ensure more
4 meaningful tours occur. Further, the department is working
5 strategically to deploy staff to specific facilities and units
6 with high levels of violence to conduct more searches and
7 support staff on those housing units. This work, along with
8 many other initiatives in the action plan, which I'm sure the
9 City and department will discuss today has already started and
10 must continue today, tomorrow and into the future with as much
11 haste as possible.

12 Second, the action plan sets about to build a strong
13 foundational structure for the department that the monitoring
14 team has long identified is missing from this agency. For this
15 reason, the overall content of the action plan may not appear
16 new or particularly novel. That is not to take away from the
17 initiatives outlined in the action plan, as they are robust,
18 critical, must be prioritized and, in some cases, reflect
19 incredibly significant changes to current practice.

20 For instance, the department has laid out a new
21 leadership structure that contemplates the infusion of external
22 correctional expertise. If done right, this will provide
23 mentorship, guidance and support to staff and catalyze a new
24 way of doing business rather than remaining entrenched in the
25 way things have always been done.

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1 The action plan also specifically addresses the
2 department's mismanagement of staff and the many initiatives
3 needed to maximize the deployment of staff and eliminate abuse
4 that has been causing a quagmire of dysfunction. These two
5 examples are significant and the magnitude of their impacts
6 cannot be minimized. As the monitor described earlier, many of
7 these initiatives may have a reverberating and possibly
8 destabilizing impact on the agency. So the implementation and
9 transition of these revised practices must be appropriately
10 sequenced and devised to avoid further destabilizing the system
11 and inadvertently undermining the very initiatives intended to
12 bring about change.

13 The operational features of the action plan still
14 require some refinements and consideration of the input from
15 counsel for the Southern District of New York and plaintiffs'
16 class counsel, which is underway. For instance, consideration
17 of adding details about the implementation of certain
18 initiatives such as touring, searches for contraband and
19 addressing unlocked doors have been made. There have also been
20 discussions about the current disciplinary process and further
21 refinements to it.

22 Finally, recommendations have been made to refine the
23 ability to assess the efficacy and oversight of the action
24 plan, including codifying additional site work done by the
25 monitoring team, identifying certain data to be reported out

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1 and the approach to assess the compliance with a more select
2 group of provisions.

3 We appreciate the Court may also have some questions
4 or feedback that must also be incorporated into the action
5 plan. We believe based on our almost decade of experience in
6 working and negotiating with these very parties in this case
7 that agreement can be reached on these outstanding operational
8 issues in the very near term. However, the overarching issues
9 of removing barriers to implementing these initiatives and
10 sustaining progress is necessary for this action plan to
11 actually be a viable pathway to reform. We are otherwise
12 destined to continue the circular process that has mired
13 reforms to date, and we will just simply be restarting the
14 clock again.

15 There is absolutely no question that the City and
16 department are working incredibly hard and taking some
17 significant and important steps, but that alone is simply not
18 enough at this juncture, even if this momentum is sustained for
19 the long haul. The six and a half year history of this case in
20 combination with the dire conditions in the jails do not afford
21 any of us the luxury to just try again, even with the
22 commitment to try harder with some new ideas and renewed vigor
23 and passion to get the job done.

24 So what more is needed?

25 Likely, the most desirable outcome would be an action

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1 plan that provides the City and the department the necessary
2 authority to manage the jails while also creating the ability
3 to cut the red tape and overcome legal and contractual barriers
4 to reform. Of course, this is all dependent on if such a
5 scheme can be created. There is no playbook or readymade
6 solution on how to disentangle the complicated web of
7 dysfunction that has created these polycentric problems facing
8 the department.

9 The monitoring team has evaluated the small number of
10 remedial models from jails and prisons across the country that
11 have faced problems similar to this department and found
12 components that may work. But ultimately, we believe that a
13 unique and creative approach must be devised specifically for
14 this system that can also capitalize on the City and
15 department's efforts to date and interest in maintaining as
16 active management of the system as possible. We fervently
17 believe that this group of stakeholders and this court are up
18 to the challenge and that this work must be confronted head on
19 right now.

20 There are three specific items that must be tackled.
21 I will take each in turn.

22 First, addressing the legal and contractual barriers
23 to to reform. This falls into two buckets; those that we know
24 now and those that will come up in the future. Those barriers
25 that we are aware of now, they must be removed. I will share a

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1 few examples.

2 First, with respect to the leadership of every
3 facility, the monitoring team has been recommending for over a
4 year that the department have the ability to select the right
5 person to serve as the warden of each facility regardless of
6 whether they had previously served in the uniform ranks.
7 Currently, by law, the warden of each facility must be selected
8 from the current uniform ranks and report to the highest
9 ranking uniformed officer in the agency. While the department
10 has developed a workaround to improve the overall leadership
11 structure, it is just that, a workaround with some confusing
12 reporting structures and the inability to select outside of
13 uniformed ranks for the position of warden remains. This is
14 not to say that all wardens must be replaced or removed. We
15 are not saying that at all. But the commissioner must not be
16 constrained in who he selects to serve in this role, given how
17 critical it is to managing and running each of these
18 facilities.

19 The record is clear that leadership in the facilities
20 are lacking and the workaround developed is simply insufficient
21 at this stage. Court relief to remove the legal barriers
22 precluding the commissioner from selecting the most viable
23 candidate for the role of warden is needed. We note that
24 additional barriers likely exist with respect to the
25 department's ability to maximize the deployment of staff as

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1 outlined in the action plan and that must be addressed head on.
2 The record to date of the City's efforts to address legal
3 barriers and contractual issues related to staffing is tepid at
4 best and insufficient to make the changes contemplated in the
5 action plan, which is why an affirmative agreement or order is
6 needed now that these barriers will not impede progress.

7 With respect to barriers that may arise -- there is
8 absolutely no question that they will arise in the
9 implementation of the action plan -- but we cannot yet
10 anticipate each and every one of them. While viable
11 workarounds may be developed in some cases, in other instances,
12 the authority to execute a particular provision outside the
13 present or existing authority of the commissioner or the City
14 will be necessary.

15 One way this can be addressed is that when these
16 obstacles are identified by the City, the department or the
17 monitoring team, that the parties must be immediately advised
18 and thereafter that there is an affirmative obligation for the
19 City and the department to make an application to the Court for
20 relief to remove those barriers and that that application is
21 made as soon as possible.

22 The second overarching issue that we must address is
23 how will progress be assessed during the pendency of the action
24 plan. As noted at the outset, the City and the department must
25 do all it can right now to address the conditions in the jails.

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1 Given the decades of mismanagement that has occurred, the
2 overall state of the department will not be changed overnight
3 or even in the near term. Significant and sustained momentum
4 is needed now to move things forward. But simply setting
5 arbitrary deadlines at the outset will not magically make these
6 problems disappear. The right people need to be recruited,
7 brought in and have the opportunity to not only get up to speed
8 but the work on operational initiatives cannot be done in a
9 vacuum and it must be done in concert with one another and the
10 various leaders that are both recruited and currently situated
11 within the agency. This will also require some significant
12 trial and error. Of course, deadlines are necessary. But we
13 cannot emphasize enough that this work must be appropriately
14 synchronized to actually be impactful and for the progress to
15 be made and realized.

16 I'd like to share a short anecdote of a case study
17 that was presented during a recent Columbia University
18 symposium about institutional reform for correctional systems.
19 The Chicago juvenile system struggled with similar issues that
20 we are faced with today. Their path toward reform involved a
21 litany of different oversight and legal mechanisms, many of
22 which failed. But success was ultimately achieved when the
23 parties devised a plan with necessary legal structures and one
24 that all parties could embrace. I highlight this case to
25 illustrate how long it takes for progress to be realized. Even

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1 after the agreed upon relief was ordered, it was reported that
2 the system, which includes just one facility with 300 beds,
3 required two years to be stabilized and six to seven years to
4 be reformed. That brings into stark focus the uphill challenge
5 that we are facing and that there is no solution that will
6 bring about change as fast as we would all like it to happen.

7 We think this case example reinforces the need that
8 the parties and the Court have the ability to reasonably assess
9 the current state of affairs on a routine basis, but it also
10 underscores the need for realistic expectations to be devised
11 to allow the action plan to take hold and determine if the
12 current pathway is leading towards reform or whether a change
13 in approach may be needed.

14 I should note that we do not intend to suggest that
15 the Chicago model is the one that must be used in New York. In
16 fact, we think a unique structure must be developed
17 specifically for this system, which maintains eight facilities,
18 one hospital ward and average daily population of 5,500
19 incarcerated individuals and 9,000 uniform and civilian staff
20 combined.

21 This leads the monitoring team to the final component
22 that is necessary to the success of the action plan, which is a
23 collective path forward. We strongly believe it is critical
24 that all parties support the pathway forward. The parties must
25 not be in a position to endorse this plan -- excuse me -- the

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1 parties must be in a position to endorse this plan and not
2 simply state they will not object to it. Such a halfhearted
3 approach to a plan of such import is doomed to fail and simply
4 creates the legal construct akin to checking the box and makes
5 further legal wrangling and litigation in the near term
6 inevitable.

7 In closing, the monitoring team fully appreciates the
8 three overarching issues: One, addressing legal and
9 contractual barriers; two, assessing progress over time; and
10 three, developing a collective pathway forward are complex and
11 complicated and that there are likely significant transaction
12 costs as we work to devise an action plan that is viable. But
13 we believe this work cannot be avoided and creative legal
14 mechanisms are necessary and that input from the Court during
15 this conference is needed today to determine whether a solution
16 can be crafted to get the department on the pathway to reform
17 that everyone can embrace. We simply cannot kick the can down
18 the road once again with essentially a fourth remedial order
19 and we in good conscience cannot support that approach. The
20 record has already demonstrated that is not enough.

21 If agreement cannot be reached, then we believe it's
22 for the parties to outline their positions to the Court so the
23 Court can determine the best path forward now. While I
24 appreciate that we will discuss next steps at the end of this
25 conference, I wanted at the outset to respectfully recommend

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1 that following this conference that the parties work together
2 and advise the Court by June 8th if such an agreement can be
3 reached and a final action plan is submitted or whether
4 additional input and/or motion practice from the Court may be
5 required. We appreciate time is of the essence and balance the
6 necessary time to do the work we have set out and believe
7 June 8th is the appropriate time to accomplish that.

8 I appreciate the Court's time, and I'm happy to answer
9 any questions you may have.

10 THE COURT: Thank you, Ms. Friedberg. I will hold my
11 questions until I have heard from everyone.

12 Now, we'll turn to counsel for the government.
13 Mr. Powell.

14 MR. POWELL: Thank you. For the record, this is
15 Jeffrey Powell for the government.

16 The government would like to share its general views
17 on the action plan, and then we'll address the issues with
18 respect to the potential barriers that Mr. Martin and
19 Ms. Friedberg have raised.

20 But before doing that, we would be remiss not to note
21 that since we were all last here before your Honor about four
22 weeks ago, two inmates have died, bringing the total deaths
23 this year in City custody to five and the total since last year
24 to 21.

25 About two weeks ago, the board of correction issued a

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1 report setting forth its investigative findings related to the
2 first three deaths of this year. The report identified clear
3 deficiencies in the staffing of the units where these inmates
4 were housed and in how these units were monitored. The board
5 found that there were no floor officers present on the units on
6 the dates that two of the inmates experienced the medical
7 emergencies that led to their deaths. With respect to the
8 third death, the board found that the department staff did not
9 conduct the required rounds every 30 minutes for over an hour
10 before the inmate's medical emergency and, in fact, did not
11 even check on the inmate's cell for at least three hours prior
12 to his death.

13 That is the backdrop. That's where we are. The
14 conditions at Rikers continue to be dangerous and unsafe, as
15 the monitor stated, and in too many instances life threatening.

16 Moving to the action plan itself, at its core, it is
17 largely a commitment to develop largely unspecified plans,
18 initiatives, policies, strategies and other steps to address
19 longstanding systematic failures. We acknowledge that some of
20 the provisions in the plan include new and old action.
21 Particularly, the commitment to restructure the leadership of
22 the department, can finally bring in outside corrections
23 professionals into the top ranks of this department. This is
24 long overdue. The department is in desperate need of this type
25 of outside expertise, as the monitor and the deputy monitor and

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1 others have repeatedly advised this court now for more than one
2 year. Unfortunately, the plan is not specific about the
3 timeline for onboarding these people into these very important
4 positions. We expect that the City will act with all due haste
5 to fill these positions, but no timeline is set forth.

6 Although we understand that it's not practical for the
7 department to lay out every operational detail in a plan
8 submitted to the Court -- we would not expect that -- we had
9 expected to see more specifics and some shorter timelines for
10 certain action items. I believe at the last conference your
11 Honor requested that there be specific and concrete steps.

12 Last week, as everyone here knows, we engaged in many,
13 many hours of discussions with the City, the department,
14 including Commissioner Molina and the monitoring team to try to
15 obtain more details on the specific operational steps and
16 actions that the department plans to take. It is clear that
17 many of these details have not been worked out yet. That is
18 why we're not in a position to necessarily endorse this plan or
19 whatever agreed upon language that we reach in the next week or
20 two.

21 Ultimately, we understand the very specific
22 operational details of how this plan is going to be carried out
23 is probably not going to be memorialized in an agreement or a
24 court order, and to be honest, no one has time for lawyers to
25 haggle out and come up with that exact language.

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1 We do think the plan addresses the major systemic
2 dysfunctional areas that have been identified over and over by
3 the monitor. It leaves certain questions, though. For
4 instance, it states the department shall revise its policies
5 and procedures regarding sick leave and absence control.
6 That's not clear to us.

7 Is the department planning on revising the policy that
8 correction officers have unlimited sick leave due to previous
9 abuses of this policy? Is the department going to require
10 additional proof of illness from staff who repeatedly call out
11 sick? We don't necessarily require that that be outlined in
12 the plan, but the specifics need to be addressed and we don't
13 really have the answers to that right now.

14 Secondly, the plan talks about appointing assistant
15 commissioners of operations for every facility at the jail.
16 However, as we have talked about with the City and the
17 department, the relationship between this new position and the
18 role of the wardens of every jail is very unclear. Who
19 ultimately is going to be responsible for overseeing the
20 day-to-day operations of each jail? To whom will the
21 corrections staff at the jail report?

22 We are very concerned that the ambiguity between the
23 rolls of these new positions and the existing wardens could
24 undermine the ability of these new hires to effectively achieve
25 real reforms inside the jails.

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1 We understand that one reason for doing it this way
2 was concerns with various state and local laws restricting who
3 you can hire into uniformed ranks. We appreciate the City is
4 finally bringing outside people in, but how that's going to
5 work remains a little unclear.

6 Finally, the plan says, the department shall
7 immediately institute improved practices to ensure that routine
8 touring is occurring, including the use of the tour wands by
9 correction officers. Those are wands, my understanding is,
10 that are touched on some sort of location throughout the jail
11 to indicate that the officer has reached that point. But it is
12 unclear what these other improved practices will be. This is
13 really the core issue that we have now is whether staff are
14 showing up at their jobs, doing their required rounds and
15 checking on the safety of the inmates. And moreover, whether
16 captains and other leaders at the facility level are making
17 sure that this gets done. Given how important this issue is,
18 we would have expected some more details to have been
19 incorporated in this action plan that was weeks in the making.

20 Ultimately -- and I'm not going to go through for
21 reasons of time constraints the various general issues and
22 questions we have, we have relayed those to the monitor and we
23 appreciate their patience with us in doing that -- ultimately,
24 regardless of the final version of this plan, the key point is
25 that the success of these contemplated reforms have to be

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1 measured by actual outcomes and results achieved in the coming
2 weeks. The real question will be whether the harm to inmates
3 and corrections staff is substantially reduced in the very near
4 future. At this point, results are the only thing that
5 matters; not plans, not good ideas, not propositions, not the
6 specific language that a bunch of lawyers may put on a piece of
7 paper.

8 On Thursday, this past Thursday, we provided -- and I
9 think Ms. Friedberg referenced this -- we provided the
10 monitoring team with our proposed list of four quantitative
11 measures that we think should be included either in future
12 monitor reports looking at how this plan is being implemented
13 or in separate reports submitted by the department to the
14 Court. These measures in large part will track the areas of
15 the plan, including the commitment to curb sick leave abuse,
16 improve the way inmates are supervised, the need to redeploy
17 staff, including captains, where they are most needed and to
18 impose timely discipline on corrections staff who engage in
19 misconduct. These are the key areas of the plan.

20 We also propose that the data include specific
21 indicators that relate to violence in the facilities. We also
22 propose that the report include specific indicators and metrics
23 that would allow us to track whether the current extraordinary
24 levels of violence are being reduced.

25 The monitor and the deputy monitor mentioned that they

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1 made some improvements this month compared to last month. But
2 as the monitor also pointed out, that doesn't mean that the
3 numbers aren't at extraordinarily high levels when viewed in
4 the context of the last few years. So we have asked the
5 monitor to include both data showing outcome measures on the
6 specific components of the action plan, as well as on the
7 levels of violence, so we can see if real change is happening
8 and whether conditions are improving and whether inmates and
9 staff are safer.

10 Moreover, we know that the monitor and his team will
11 continue to make regular visits in the coming weeks to the
12 jails to assess whether the operational changes referenced in
13 the plan are actually being implemented, whether the posts are
14 adequately staffed, whether basic security protocols were being
15 followed and whether the dangerous and unsafe conditions are
16 being addressed. These firsthand observations of actual
17 progress will be invaluable in allowing us, the public and the
18 Court to evaluate whether this plan is making a difference and
19 translating it to safer conditions in the jail. In short, the
20 more eyes in these facilities the better.

21 I was going to address the obstacles or barriers that
22 the monitor and deputy monitor referred to and our views on
23 those. At the last conference, we noted that extraordinary
24 remedies are likely to be necessary to address the entrenched
25 dysfunction of bureaucracy that have stymied prior reform

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1 efforts. We proposed two ideas. One was a possibility of
2 executive orders by the mayor or the governor to remove the
3 legal or bureaucratic hurdles. We also talked about the
4 possibility of a stipulated court order that would allow the
5 department to take actions that may arguably be inconsistent
6 with certain state or local law or contractual requirements in
7 order to address ongoing constitutional violations, which the
8 PLRA allows for. The plan does not include either of those two
9 options.

10 The government shares the monitor's well articulated
11 concern about whether the department will be able to achieve
12 real reform without more explicitly addressing how it will
13 overcome existing barriers, including laws, regulations or
14 contractual provisions that have led to years of dysfunction.
15 Just like the monitor, over the last six plus years, we have
16 been repeatedly told that many of the needed reforms and the
17 monitor's recommendations couldn't be implemented because of
18 various legal rules, laws or CBA provisions. Prior
19 well-meaning commissioners -- and we have heard from them --
20 have indicated that they have run into these obstacles in
21 trying to reform the agency. We strongly agree with the
22 monitor that now is the time to tackle these obstacles and
23 barriers to reform.

24 Indeed, the government views the appointment of a
25 federal receiver as one way to address these barriers and is

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1 continuing to consider that option, if the City cannot figure
2 out on its own how to overcome these obstacles. We have
3 proposed specific language to the City last week to address the
4 two points that Ms. Friedberg made. One, to deal with current
5 legal limitations that may present obstacles to addressing
6 staff absenteeism and revising staff assignment and deployment
7 practices. We have also addressed language to deal with the
8 issue of how to address potential future legal obstacles as the
9 department tries to implement other reforms and changes. To
10 date, we have not received from the City an agreement on that
11 language or a counterproposal.

12 Now, in May 2022 -- and I expect you'll hear this from
13 the City -- the City appears to be taking the position that
14 there are actually no legal barriers to implementing all of the
15 items in the action plan. They can confirm that when they
16 talk, of course. This causes us to question whether the
17 contemplated reform efforts are actually substantially
18 different than what has been tried and failed before and
19 whether the actions to be taken will be sufficiently aggressive
20 and drastic to achieve the necessary level of change.

21 Finally -- and then I will stop talking -- we would
22 note that, like everyone else, putting aside all my other
23 comments, the government very much hopes that this plan will
24 succeed. We hope that this commissioner who is definitely
25 engaging in good-faith efforts to reform this agency is able to

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1 quickly address the unsafe conditions. The administration,
2 including the mayor and this commissioner, have asked us to
3 give them a chance to implement their own plan to address the
4 department's systemic failures. However, given the long
5 history of failed reform efforts at Rikers, the government must
6 be and is prepared to seek further relief, including
7 potentially the appointment of a federal receiver, if
8 necessary. Such an application will be necessary if, in the
9 coming weeks and months, the department fails to make
10 substantial and demonstrable progress in implementing the
11 reforms, initiatives, systems and practices outlined in the
12 action plan or if these efforts do not result in a substantial
13 reduction to the risk of harm currently facing inmates and
14 staff.

15 Indeed, last week, we asked the City to include
16 specific language in the ultimate action plan to be submitted
17 to this court that would state that if the monitor makes the
18 determination at some point that substantial progress is not
19 being made that the City would agree to the appointment of such
20 a receiver. The City has declined to include such language and
21 rejected that approach. Unfortunately -- and we hope we don't
22 get there -- this may lead to protracted legal proceedings
23 before the Court at some point in the future. In this case,
24 more time means more harm for inmates, staff and everyone in
25 the jails. We would like to ask the City to reconsider its

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1 position.

2 If your Honor has any questions, we'll be happy to
3 address them.

4 THE COURT: Thank you, Mr. Powell. I will, again, go
5 on to hear everyone before I ask any questions.

6 So we'll turn now to counsel for the plaintiff class.
7 Ms. Werlwas.

8 MS. WERLWAS: Good afternoon, your Honor and fellow
9 counsel and parties.

10 When we were here before your Honor last month, the
11 plaintiff class expressed our grave concerns that the City's
12 proposed plans at that time were not sufficient to remedy six
13 years of noncompliance with this court's order and to protect
14 the plaintiff class. Those plans were too vague, too
15 shortsighted, too weak. We shared the view then of the United
16 States government, as expressed in its letter to the Court last
17 month, that -- and I'm quoting here -- absent a commitment to
18 expeditiously make the dramatic systemic reforms identified by
19 the monitor and to revamp the agency's operations and
20 satisfying practices -- I'm ending that quote -- but we would
21 be left with no option other than to seek appointment of an
22 independent receiver to implement reforms.

23 We left that conference last month looking forward to
24 receiving from the City a plan that would articulate a
25 different path, that would show the approach needed to resolve

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1 these problems short of receivership. We were hoping to
2 receive a plan that would demonstrate that the City could
3 succeed now where it has failed for six years.

4 Unfortunately, it would be an understatement to say
5 that we found the action plan profoundly disappointing. We
6 will not be consenting to entry of this plan as a proposed
7 order of the Court.

8 We have conferred very extensively with the parties
9 and the monitor over the last several days sharing our many
10 concerns and, frankly, have found the City's intransigence and
11 resistance to collective problem solving to be very troubling.
12 Where we are left is concluding that the City's action plan
13 does not show us a different path forward. It does not
14 persuade us that the City appreciates the magnitude of the
15 challenge it faces, nor has the political will to meet it.

16 It's absolutely true that there are some changes the
17 City promises to make in this plan that will likely be
18 improvements. The replacement of the central office uniformed
19 leadership with civilian commissioners is significant. We hope
20 that is helps and agree entirely that is long overdue.

21 So too the plan points to potential changes in staff
22 deployment and staff absenteeism that might abate the horrific
23 crisis of understaffed jails. But in too many respects, the plan
24 does not commit the City to making those changes about
25 staffing. It does not commit the City to making deep or

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1 foundational changes that the City itself agrees are needed.
2 It shrinks from or defers the hard choices. Instead of taking
3 this opportunity to remove barriers, the City has resorted to
4 the learned helplessness that creates danger for people in
5 custody.

6 In our view, the action plan is essentially a plan for
7 an action plan and that is largely where we were last month.
8 There's no question that plans are necessary for action, but at
9 this late stage plans for more plans are not enough. The
10 magnitude of the harm that our plaintiff class is suffering
11 demands more.

12 We want to give a few examples of some to concretely
13 illustrate some of the deep deficiencies that we have seen in
14 the plan. Throughout the plan, there are unacceptably vague or
15 largely unenforceable provisions. As the United States
16 government raised, the provision on sick leave, which is
17 critical, critical to resolving the crisis right now, states
18 merely that the department shall revise its policies regarding
19 sick leave. It's frankly impossible to discern how this
20 provision mandates change, provides a plaintiff class with any
21 relief or why it will take three months to accomplish in the
22 midst of a very dangerous crisis, when these are issues that
23 have been identified for months.

24 Secondly, the plan, while it does include deadlines
25 that were largely unspecified in last month's plan, those

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1 deadlines are inexplicable and protracted. As one example, why
2 should it take two months for the City to determine which of
3 its paid uniformed work staff are actually available to work a
4 shift. It is hard to imagine a competent workplace that would
5 need two months to identify its workforce, let alone how this
6 represents responsible stewardship of the agent's significant
7 custodial and fiscal duties.

8 Similarly, the plan suggests 90 days to appoint a
9 staffing manager and another 90 days after that person has
10 joined the agency to present a plan to deploy staff, and
11 thereafter, a process of about three weeks for the monitor
12 potentially to object to the plan and still more time for the
13 department to respond, and only then are the changes to
14 deployment and staff required to be implemented with no
15 deadlines thereafter. Under this schedule, it will be December
16 before the City is even arguably required to take action to
17 change the staffing practices that are described in this plan.
18 And that is simply too late for something that is a core
19 correctional function and is the baseline for keeping people
20 safe in the jails.

21 I mean, there are actions a plan could prescribe now.
22 To be sure, we agree entirely with the federal government, not
23 all the actions can be spelled out in the plan and, frankly,
24 nor should they be. But there are known problems the City can
25 commit to solving today. For example, DOC struggles to staff

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1 housing units and priority posts. And Mr. Austin, the
2 consultant, and the monitor have identified a number of awarded
3 posts in DOC as a barrier to flexibility and getting staff
4 where they need to be. The City has said, it has the
5 managerial authority under the labor laws to reassign staff
6 with awarded posts now. So why can't they do it in 30 days?

7 They're bringing in a staffing manager, who can no
8 doubt help create good processes and make fixes that are
9 necessary, but that doesn't mean the City should wait six
10 months to address a known issue it can resolve now. That would
11 have an immediate impact on the staffing available to protect
12 the plaintiff class.

13 Finally, we'll just make one other illustration of the
14 deficiencies in the plan and those that we have raised with the
15 City, and that is regarding the absence of a meaningful plan
16 for remedying the impunity for staff who commit misconduct due
17 to the failure of the disciplinary system. As the
18 circumstances that led to the third remedial order of this
19 court made clear, the City's noncompliance with the consent
20 judgment's requirements that it impose timely and meaningful
21 discipline have caused the use of force violations at the core
22 of this consent judgment to continue. The added dimension of
23 protracted, widespread absenteeism and the need to prevent
24 abuses of unlimited sick leave further illustrate the critical
25 need for a functional, timely disciplinary system. Yet, other

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1 than addressing timelines for the small minority of serious and
2 egregious cases and promising a recruiting strategy for trials
3 division staff, the plan does not provide a path forward or
4 meaningfully address either the backlog of approximately 1,900
5 cases that still exist, nor the City's inability to impose
6 discipline prospectively in a timely fashion. We made clear
7 discipline is not the only or even the primary function of
8 workplace management, but the impunity for rule violations that
9 the current workforce enjoys does pose a direct barrier to
10 meaningful relief and we do not see the plan as providing a
11 path forward.

12 We, in short -- and to sum up -- we did not see in
13 this plan or in the discussions that we had in the weeks since
14 the plan as providing a tenable alternative to a receivership
15 remedy. We welcome creative problem solving. And we would
16 certainly be open to hearing creative solutions that could
17 point a path forward. We very much hope that there is one.

18 But as we raised last month, the idea or the prospect
19 of dual tracks, we think that where we are left now is that,
20 while the City certainly should continue to make all of these
21 changes and every change that it can -- and we know that many
22 people are working very hard to do so -- and we will continue
23 to engage with the monitor and with the City to make these
24 measures more robust. And we look forward to receiving
25 information that shows that significant progress has been made.

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1 But we also believe that, at the same time, we will be
2 preparing a receivership application that we hope we do not
3 have to file. We would like to see changes that abate such a
4 need. And we look forward to seeing rapid and immediate
5 improvements in the protection for our clients, but the
6 experience of the last week and the plan that we have seen do
7 not give us optimism that this mechanism will be sufficient.

8 Thank you.

9 THE COURT: Thank you, Ms. Werlwas.

10 Ms. Greenberger.

11 MS. GREENBERGER: I am not going to add anything to
12 Ms. Werlwas' comments at this time. Thank you, your Honor.

13 THE COURT: Thank you.

14 I now turn to Ms. Joyce and the commissioner.

15 MS. JOYCE: Good afternoon, your Honor. And thank you
16 for the opportunity to appear before you today.

17 First, I want to reiterate that the City of New York
18 is fully committed to this action plan and to taking the
19 necessary steps, both immediately and in the long-term, to fix
20 the problems that are plaguing Rikers. The City recognizes the
21 urgency of the situation. Neither the status quo nor business
22 as usual is acceptable. Rather, significant and drastic
23 changes need to be made now. We have begun making those
24 changes and are committed to continuing making those changes.

25 While we, the parties, may not all agree on what those

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1 changes need to be, I think we can all agree that we have the
2 same goal, which is safe and humane jails for all that are
3 detained at Rikers and all who work there. The City's action
4 plan, which was submitted to the Court last week, lays out the
5 steps necessary to achieve those mutual goals.

6 One of the most public steps that the City has taken
7 to show its commitment to problem solving and immediate action
8 is the formation of the Rikers interagency task force, which is
9 co-chaired by the deputy mayor of public safety and chief
10 counsel to the mayor, Brendan McGuire. The purpose of this
11 task force is to make sure that every relevant city agency
12 prioritizes all Rikers-related matters brought to their
13 attention and cooperates fully to resolve the issues identified
14 by the monitoring team in the Nunez litigation and to
15 accomplish the objectives of the action plan in a timely,
16 efficient and effective manner.

17 As a colleague described it in basic terms, the task
18 force turns red and yellow lights to green lights and is
19 available to expeditiously respond to requests from the
20 department of correction and the law department. The task
21 force is made up of members from city hall, the law department,
22 the department of correction, the department of citywide
23 administrative services, the department of design and
24 construction, the office of labor relations, the office of
25 management and budget, the office of administrative trials and

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1 hearings and correctional health services.

2 In the few weeks that the task force has been meeting,
3 it has taken necessary and drastic actions -- some of which I
4 will discuss in a moment -- to immediately address issues
5 occurring at Rikers. This is not an exhaustive list and it is
6 not in any order of importance, but the agencies on the task
7 force have accomplished the following: We have received the
8 commitment of the Bronx district attorney's office to expedite
9 cases for those who have been detained forked over 365 days.
10 We have referred cases of sick abuse to the department of
11 investigation. We have received commitments from other city
12 agencies to provide trial attorneys to the department's trials
13 division to process the backlog of cases. We have increased
14 incentives for those working with the department's trials
15 division, including the waiving of the residency requirement,
16 providing compensation for overtime worked, the piloting of a
17 compressed work schedule and a reprieve of the two for one
18 hiring requirements of the City.

19 The task force has also secured \$20 million in funding
20 to fix the broken cell doors at RMDC and RMKC. We have
21 obtained approval from OMB for additional resources for OATH
22 and for the department's health management division within
23 days.

24 We have expedited both vettings and appointments both
25 at OMB and city hall so that the department could onboard staff

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1 from the outside more quickly, including the deputy
2 commissioner of security, who has already begun, the deputy
3 commissioner of trials, who begins on May 31st, the deputy
4 commissioner of investigations, who began on May 9th, and the
5 deputy commissioner of classification, custody management and
6 facility operations, who will join the department in July after
7 a job transition.

8 The department has also posted for the jobs of
9 associate commissioner of operations, assistant commissioner of
10 operations, senior deputy commissioner and deputy commissioner
11 of administration. When candidates are chosen for those
12 positions, they too will be expedited at vetting and
13 appointments. We have received commitment to invest and
14 prioritize mentorship, training and professional development
15 for staff to give them the support that they need to be
16 successful in this agency. Your Honor, this list of
17 accomplishments will continue to grow as the group meets weekly
18 to address the very pressing issues plaguing Rikers.

19 Mayor Adams brought on Commissioner Molina five months
20 ago with a mission to reform the agency and Commissioner Molina
21 is doing just that. He is a fresh set of eyes coming into the
22 department to take a holistic review of how things are done and
23 shaking up business as usual. While we recognize that the City
24 is an institutional defendant and that failure by the
25 institution to take meaningful action over the last six years

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1 cannot be ignored, since January 1st, there are new people
2 responsible for ensuring that the institution does in fact take
3 swift and significant action to instate the necessary reforms.
4 As I have mentioned and as you will hear shortly from
5 Commissioner Molina, the City under the Adams administration is
6 already moving in the correct direction.

7 The other parties' desire to not permit the action
8 plan to go forward without more is a step backward rather than
9 a step forward, and it is a hitting of the restart button.
10 Given the record of what the City and the department has
11 accomplished over the past five months, we respectfully request
12 that your Honor allow the defendants to continue to work to
13 bring Rikers into compliance with all of the orders this court
14 has issued.

15 We left the conference with your Honor three weeks ago
16 tasked with developing a plan of action to make necessary
17 changes to make the jails a safer place. We have not only
18 developed that plan, but as the commissioner will describe, he
19 has already begun to execute many of its components. And he
20 and the City are ready, willing and able to continue the hard
21 work of taking the department in a new and different direction.

22 Your Honor, in short, as has been raised by some of
23 the parties, we do not need any extraordinary authority ordered
24 by the Court nor the appointment of a receiver, not for all or
25 any part of the jails' operations. Moreover, we respectfully

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1 submit that we do not believe there is a sufficient factual
2 basis at this time for your Honor to make the findings
3 necessary to support ordering such extraordinary relief, either
4 by waiving or suspending provisions of state or local law or by
5 appointing a receiver.

6 Under the prison litigation reform act, relief must be
7 narrowly drawn, extend no further than necessary to correct the
8 harm and be the least intrusive means to correct the harm such
9 that no other relief will correct the violation. We have not
10 reached that point. The actions being taken by the City in
11 accordance with the action plan, which was drafted in
12 conjunction with the monitoring team, are necessary to address
13 the issues outlined in the various court orders in this case.
14 For that reason, the extraordinary remedy of waiving laws or
15 appointing a receiver does not conform with the requirements of
16 the PLRA. All of the actions that are necessary to be taken to
17 reform the department are within the City and the department's
18 power and authority and we are ready, willing and able to
19 execute that power and that authority. By asking for the City
20 to consent to extraordinary relief now, we are being asked to
21 anticipate potential legal challenges to the action plan or
22 parts of the action plan, but we do not believe there is a
23 sufficient factual basis for the Court to find under the PLRA
24 based upon speculation. As I noted before, speculating that
25 the City will fail based upon past actions of people who are no

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1 longer city employees is not warranted. Moreover,
2 extraordinary powers is not the solution. It is not a panacea
3 or a quick fix.

4 As Ms. Friedberg mentioned a few moments ago, it took
5 two years for a receiver in Cook County to stabilize a single
6 juvenile detention facility housing no more than 300 10 to 16
7 year olds. Let us not speculate on how long it would take an
8 outside receiver to stabilize an agency detaining over 5,400
9 adults and over 7,000 employees. It would not happen overnight
10 and stabilization certainly would not happen in a few short
11 months.

12 The City has an action plan that it has already begun
13 to implement with some demonstrated success and is going to
14 continue implementing. We are taking concrete actions right
15 now and we have a plan that we believe will work.

16 Thank you very much for your time, your Honor. I'm
17 going to in a moment turn it over to my colleague, Commissioner
18 Molina, and at the appropriate time I will be happy to answer
19 whatever questions the Court may have.

20 THE COURT: Thank you, Ms. Joyce.

21 Commissioner Molina.

22 MR. MOLINA: Good afternoon. My name is Louis Molina,
23 the Commissioner of the Department of Correction for the City
24 of New York. Your Honor, thank you for opportunity to address
25 the Court again and share with the Court where the department

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1 is today as we begin to implement the action plan developed
2 jointly with the monitor.

3 I first would like to point out that, since my
4 appointment, I have not been granted any extraordinary
5 authority. But as I have previously stated, with the support
6 of Mayor Adams coupled with my commitment to use all of the
7 powers inherent in the office of the commissioner, I will share
8 with you quantitatively what the department has been able to
9 accomplish within approximately five months. It has been
10 mentioned that the time frame is brief, but it is the time
11 frame that this administration has been in charge.

12 Since a multi-strategy violence plan, which was
13 focused on the Robin and Danvers center, also known as RMDC,
14 went into effect, slashings and stabbings in April of this year
15 versus March of this year have decreased 45 percent. When you
16 compare April of this year to April of last year, the decrease
17 is 24 percent. And month to date, May 1st to May 23rd, versus
18 the same time last year, the decreases of slashings and
19 stabbings at RMDC are 67 percent. The impact department-wide
20 in April of this year versus March of this year also
21 experienced a decrease of 35 percent. And month to date,
22 department-wide versus the same time frame last year, the
23 decrease is 52 percent.

24 The reinstatement of facility searches and tactical
25 search operations, not only another RNDC, but at GRVC, has

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1 decreased slashings and stabbings at GRVC in April of this year
2 versus March of this year by 45 percent. And when April of
3 this year is compared to April of last year, the decrease is
4 also 45 percent. And May 1st to May 23rd of this year,
5 compared to the same time frame last year shows a decrease at
6 GRVC of 80 percent. Note that these two facilities had been
7 leading the department in slashings and stabbings.

8 When it comes to use of force incidents, which I
9 recognize are still high, we have experienced double digit
10 decreases since January of 2022 ranging from 15 to 35 percent.
11 In calendar year to date, force incidences have decreased 27
12 percent. RNDC, where the majority of our young adults are
13 housed, has experienced month-to-month decreases since March.
14 And department-wide assaults on uniformed staff calendar year
15 to date have decreased 31 percent and assaults on nonuniformed
16 staff have also decreased 32 percent.

17 I stated the last time I was in your court, Judge
18 Swain, the importance of accountability and discipline in a law
19 enforcement agency; two critical traits that were absent for
20 far too long. In my time as commissioner, we have submitted
21 calendar year to date, 150 medical incompetency cases to OATH
22 for adjudication. In all of 2021, only 160 cases were
23 submitted. I have finalized over 820 disciplinary cases to
24 hold staff accountable, while at the same time closing out
25 matters that allow the majority of staff members closure and

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1 the ability to improve their professional careers. These 820
2 plus cases represent significantly more than what was done
3 under the last two commissioners combined in the same time
4 frame.

5 Your Honor, what the new leadership team has been able
6 to accomplish in the last few months represents what can be
7 accomplished under the mayor's leadership to leverage different
8 departments of New York City government. This is further
9 strengthened by his issuance of an executive order instructing
10 specific departments to focus on the department of corrections'
11 needs and by a commissioner with the will to exercise the
12 expansive powers inherent within the office of the
13 commissioner.

14 The action plan, which is crafted by the monitor, with
15 significant input from my team lays out the work that is needed
16 to address the four foundational issues raised by the monitor.
17 This action plan addresses security practices, inadequate
18 supervision, staffing practices and staff accountability. Your
19 Honor, as the monitor has repeatedly stated, change must come
20 from within. And with the support of Mayor Adams and my
21 commitment and record of success in implementing reforms, when
22 I successfully guided Westchester County Jail out of federal
23 oversight, this department is no longer neglected and is now
24 empowered under my leadership and the support of Mayor Adams
25 with the ability to fix these problems from within.

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1 We all, your Honor, are committed to this action plan.
2 The labor leaders that represent uniformed staff, the president
3 of the assistant deputy warden and deputy warden command
4 association, the president of the correction captains
5 association and the president of the correctional officers
6 benevolent association have all publicly supported the mayor
7 and I in implementing this action plan.

8 I also want to talk about facility leadership, our
9 wardens. For too long, they have been placed in the position
10 to manage facilities that have been underinvested for years.
11 The wardens kept together the majority of staff that were
12 coming to work under a global pandemic that destabilized every
13 person in the world's way of life. They accomplished this by
14 mere gut. Because historically, they have been provided little
15 to no investment in their own development as managers. The
16 wardens and their teams were expected to perform miracles.

17 Quite frankly, given that the department was abandoned
18 during the 2020 and 2021 years of the pandemic by the prior
19 administration, oversight bodies and many others that stayed at
20 home working remotely, as bad as things were, they could have
21 been significantly worse. The wardens and acting wardens did
22 all they could to keep day-to-day operations functioning,
23 fighting against a pandemic and outside that created a system
24 of chaos that manufactured an ecosystem of destabilization to
25 advance the surety that Rikers Island would be closed by any

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1 means necessary, no matter what the cost to staff and persons
2 in custody.

3 Your Honor, what I have been able to accomplish to
4 date has been with the assistance of the wardens, acting
5 wardens and their respective teams. This has produced violence
6 reductions and force reductions that I shared with the Court.
7 Under my direct supervision and support, along with the
8 infusion of other outside correctional professionals that will
9 make up the new command staff structure of operations, which
10 will include a senior deputy commissioner, deputy
11 commissioners, associate commissioner and assistant
12 commissioners working in concert with the wardens and their
13 respective teams, I am confident that they will, as they have
14 over the last few short months rise to the moment and meet the
15 standards expected by this court, the mayor, myself and the
16 societal expectations of a humane jail system.

17 The infusion of outside correctional professionals
18 that will have under my authority the ability to reform the
19 framework of the administration of these facilities to a model
20 of success beyond a Nunez consent judgment. We are at a
21 historic moment and this court will determine if we are given
22 the opportunity to continue.

23 I am asking the Court to allow me the time I need to
24 continue to build on what I have done via the action plan.
25 Your Honor, we have not exhausted all remedies. And for once,

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1 what we have today that is critically different is Mayor Adams
2 and myself, two people who advocated for reform. If you look
3 at our histories, we have been so committed to reform that we
4 have placed the protection of vulnerable populations before
5 even our own past positions in law enforcement. Why? Because
6 we were not willing to compromise our principles because it was
7 literally our communities that were impacted.

8 Your Honor, the mayor and myself come from the same
9 ZIP codes as the women and men that work at the department of
10 corrections and are placed in the custody of the department of
11 corrections on Rikers Island. And for too long, that is why it
12 was so easy for the prior administration to abandon us. Past
13 administration can talk about how they want a jail that if
14 their own family members were there, they would want them to be
15 safe. The difference between them and me, your Honor, is that
16 my family was there. I did not live a life of privilege where
17 every opportunity was handed to me in my life. I fought for
18 this position and where I am today. And it's through that lens
19 and life experiences that I view the importance of this work.
20 It is not just about slogans for me or the mayor. It is about
21 action and outcomes and holding people accountable. Your
22 Honor, today is different day. And we have shown in a short
23 time that we are different from the past. I absolutely believe
24 in this action plan and do not need extraordinary authority to
25 implement the remainder of the plan to achieve success. I am

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1 confident that we will succeed.

2 Thank you, your Honor, for the opportunity to share
3 those brief remarks with you. I'll make myself available for
4 questions.

5 THE COURT: Thank you, Mr. Commissioner.

6 What do you say to the objections to the sort of
7 general, vague undertaking language in the action plan and the
8 absence of concrete data points or measurable steps in the
9 action plan as submitted now?

10 It is certainly commendable and encouraging of hope
11 that things may change, but people are dying, people are being
12 hurt right now. Staff are still not deployed in a logical way.
13 And the parties here and the monitor are asking for ways in
14 which they and I can, at very specific near term intervals,
15 know what is going to happen and be able to assess whether real
16 change reducing the violence and risk is happening in real
17 time.

18 MS. JOYCE: I think we can both address that. I will
19 start first, your Honor.

20 I know that Mr. Powell mentioned metrics, measurable
21 metrics. Those have not been shared with the City or with the
22 department. So if the department of justice would like to
23 share the metrics that he was speaking about that would
24 demonstrate to them that we are moving along in the action plan
25 for us to consider, we would be happy to consider those. They

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1 just have not been shared with us yet.

2 What I will say to the parties' characterizations of
3 vagueness, I would respectfully disagree and state that this
4 action plan, as set forth, sets forth concrete steps that the
5 department needs to take. And where it does not set forth
6 concrete steps, it has at reasonable timeline, which is an
7 outside timeline -- where things can be done faster -- for
8 these people who are coming in from the outside and infusing
9 their expertise into the department for them to be able to come
10 in, give their assessment so that those concrete steps can also
11 be taken.

12 So it's not that the plan is vague, it's there are
13 concrete steps to be taken now. And when this infusion of
14 external people starts coming in, starting in May through July,
15 other additional steps will be taken based on the needs that
16 they see the department has.

17 MR. MOLINA: If I could just add, your Honor, as it
18 relates to the plan and being specific, there are specificities
19 to the plan. When we talk about the expansion of the security
20 plan, which I initiated at RNDC, we did provide dates of when
21 we will be expanding that plan to other facilities and we
22 provided a date on or about June 20th. With these plans, we're
23 required the shifting of staff.

24 When it comes to infrastructure improvements, whether
25 they be cell doors, installing polymer along plexiglas windows,

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1 we do have time frames of that construction being done. As
2 we're getting time frames of when other materials will be
3 arriving and the work will be done, we will be sharing with the
4 monitoring team a schedule of that work being done.

5 Some of the provisions within the plan are technology
6 solution oriented. We're in the process of talking with
7 vendors, doing an RFP, evaluating their ability to satisfy the
8 needs to deal with scheduling, staff accountability, scanning
9 and equipment like that. Some of that has to be installed.
10 And of course, we would inform and share with the monitoring
11 team the time frame of when those issues are being done.

12 As it relates to policy issues, policies have been
13 changed and we have shared policies, for example, like our home
14 visit policy, which was already revised and promulgated
15 yesterday. We shared that with the monitoring team.

16 When it comes to our health management division, I
17 took swift action at the health management division, removing
18 the prior warden, installing temporary new leadership at the
19 health management division. We're talking about doctors, other
20 healthcare providers that are providing services to ensure that
21 we have checks and balances for our staff that is out. So that
22 is not something we will be sharing with the monitoring team as
23 we get permanent leadership within the health management, as
24 well as any new technology solutions to account for checks and
25 balances and accountability of staff.

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1 We talked about expedited discipline. When it came to
2 discipline --

3 THE COURT: Mr. Commissioner, I'm sorry, I think that
4 I didn't hear you clearly. When you said that, as to new plans
5 for the health management division and technology of the
6 division, it wasn't clear to me the specifics of that plan will
7 be shared with the monitoring team or would not.

8 MR. MOLINA: They would be shared with the monitoring
9 team. So I have been in regular communication with the
10 monitoring team as we have developments. Since some of the
11 technology solutions would be on a time frame, we would share
12 that schedule with them. If it's technology oriented, if it's
13 staffing oriented, we would do the same, your Honor.

14 THE COURT: Thank you.

15 Please go on.

16 MR. MR. MOLINA: Other than that, to the new
17 organizational command structure that we developed, the deputy
18 commissioner of security began on May 16th. As the Court will
19 recall, this was a request for a remedial order to have a
20 securities operations manager. When that was brought to my
21 attention, when I was first appointed, we immediately made sure
22 that that position would have power and authority in order to
23 make decisions as well as deploy staff. That's when we agreed
24 with the support of the monitoring team to make that individual
25 a deputy commissioner of security.

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1 It took time to find this individual and to vet
2 candidates. Just to remind the Court, we are a law enforcement
3 agency, so it does take time not only to find good, qualified
4 candidates, but we need to make sure we're vetting these
5 individuals because they're in high executive positions within
6 the agency.

7 And recommendations that are made by Dr. James Austin
8 regarding gang housing, when that recommendation was made, I
9 immediately began rebalancing gang housing, which was something
10 that I was going to do from the onset of my appointment. It
11 was something that was talked about during my interview
12 process. As well as when he recommended the discontinuation of
13 the hub that was implemented by McKenzie and Co., I did that
14 immediately.

15 And we have selected a finalist for the deputy
16 commissioner of classification and custody management, which
17 was a recommendation that Dr. Austin made, and that individual
18 is transitioning from one job to come work with us. So
19 sometimes, we have to manage other individual's schedules
20 through this process.

21 But we will be as aggressive in doing recruitment in
22 order to find the most highly qualified and experienced
23 individuals to be part of our command structure.

24 THE COURT: What will be the relationship and
25 specifically the division of authority as between wardens and

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1 these new deputy commissioners and staff?

2 Who, at the end of the day, decides how the wardens'
3 facilities are managed day-to-day?

4 MR. MOLINA: That would be myself, your Honor.

5 So the way the structure would work is the wardens
6 will report directly to me. That became effective yesterday,
7 with the anticipation of the new changes in leadership within
8 our current command structure with the chiefs. We would have a
9 structure where we would have a senior deputy commissioner of
10 operations. Down from that structure, we would have three
11 deputy commissioners; a deputy commissioner of security a
12 deputy commissioner of classification and custody management
13 and facility operations -- that is one person -- and a deputy
14 commissioner of administration. Assisting with the management
15 of sort of macro facility operations, we would have two
16 associate commissions that would be reporting up to the deputy
17 commissioner of custody management and facility operations and
18 we will be embedding assistant commissioners within all of the
19 facilities. So I'll be meeting one-on-one with the wardens and
20 managing them directly to include the assistant commissioners
21 that would be at these facilities.

22 THE COURT: Mr. Commissioner, you said that you have
23 the support of the unions. And Ms. Joyce, you said that you
24 believe there are no barriers. And so am I to understand that
25 to mean that you do not expect to have collective bargaining

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1 agreement based pushback on the elimination of the rules that
2 have allowed people to choose nonhousing unit spots and the
3 other problems that have led to units not being manned and
4 other staffing-related problems?

5 MR. MOLINA: Thank you for the question, your Honor.

6 No, the issues of deployment of staff, I do not see
7 any collective bargaining barriers to that. We have within our
8 policy managerial discretion to be able to deploy staff as
9 needed to housing posts.

10 THE COURT: Thank you, Mr. Commissioner.

11 Turning back to the monitor and the deputy monitor for
12 further response, in light of these comments, and then let's
13 see where we go from there. I'll ask that people be as concise
14 and pointed as possible in areas of further inquiry and
15 proposed next steps, just looking at the clock. I
16 unfortunately need to have a hard stop here by 4:45 at the
17 latest and want to have clarity about where we're going next.

18 So Mr. Martin or Ms. Friedberg.

19 MR. MARTIN: Yes, this is Steve Martin.

20 THE COURT: Please continue, Mr. Martin.

21 MR. MARTIN: Yes, thank you.

22 The commissioner has taken what I would describe as a
23 fairly hard, confident posture that he, with support by the
24 City, can manage this agency with some success and dispatch,
25 emphasis on dispatch. Because he does and has acted in certain

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1 areas with a degree of certainty and speed to effectuate his
2 vision.

3 It may be, as I was listening to the parties and the
4 questions of the Court, that if the parties can construct a set
5 of metrics that reliably report out on the level of safety and
6 at the same time monitoring the progress of the agency on these
7 initiatives, that would maybe lessen the requirement to flesh
8 out these timelines, to flesh out more information that the
9 plaintiffs are rightfully and validly requesting. I'm not
10 discounting the import of what the SDNY and LAS said.

11 But these matters are so cumbersome to cross all the
12 Ts and dot all the Is, aren't we really, in the final analysis,
13 interested in harm and reduction of harm with some dispatch?
14 That's the ultimate outcome. If we have metrics that can
15 measure that weekly, biweekly, monthly, whatever and gauge
16 reliably that reduction in harm with the commitment, strategies
17 and so forth the commissioner and the City have made here
18 today, I'm not -- I mean, it's to the parties and the Court,
19 I'm just almost thinking out loud here -- and I know SDNY has
20 submitted a set of metrics that Ms. Joyce, I think, rightfully
21 said have not been shared them, I know I have reviewed those
22 metrics. My office is knee deep in metrics. And I think a set
23 of really refined, reliable metrics can be developed.

24 Put them out there and let the commissioner go. Let
25 him see if his vision and confidence can be realized. And I'm

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1 not so sure he needs to be wed or constricted or restrained by
2 a lot of minutia that can find their way into these types of
3 plans. I'm not saying I embrace it. I'm just saying I'm
4 putting it out there for something that the parties can
5 consider because I heard LAS and SDNY, they're interested in
6 outcomes and the reduction of harm. And they want to be able
7 to determine that as we move through this. So if that's the
8 case -- now, we certainly can refine the action plan and so
9 forth -- but I think where I would put -- what I would advise
10 the Court and the parties, let's set about to define with as
11 much precision and reliability as we can these metrics.

12 Put them out there. It's a score card. The
13 commissioner is going to be so aware of what he's doing at any
14 point in time on those metrics that where they are not trending
15 or moving as they should, he is going to direct his
16 attention -- I would assume, commissioner -- to why they're
17 trending up or not trending down as much as you would like to
18 see.

19 Is that not fair, what you would be doing with
20 metrics, commissioner?

21 THE COURT: Mr. Commissioner, please respond.

22 MR. MOLINA: Yes, Mr. Martin, I would agree with you
23 on that.

24 MR. MARTIN: Okay.

25 MR. MOLINA: If I could just add, Mr. Martin, that's

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1 why one of the first things I did was want to develop an office
2 of management, analysis and planning because I wanted us to be
3 a department that was very evidence-based in its
4 decision-making and tracking of our successes.

5 MR. MARTIN: As your Honor and the parties all know, I
6 rely heavily on my deputy monitor. I certainly want to give
7 her an opportunity here to comment too. So if you would permit
8 her to do that. Anna.

9 THE COURT: Thank you.

10 Ms. Friedberg.

11 MS. FRIEDBERG: Thank you, your Honor. This is Anna
12 Friedberg speaking.

13 I think, ultimately, the monitoring team's position
14 with respect to where the lapses in the plan may remain, but to
15 the extent we're trying to discuss how do we proceed in the
16 next coming days, weeks and months, I certainly think that
17 Mr. Martin's suggestion that we work collaboratively with the
18 parties to develop some metrics so that they can have some more
19 contemporaneous information to see how things are going right
20 now certainly is a feasible option.

21 I think there are some components of the action plan
22 that do still merit some work, both because the City and the
23 department when they proposed the plan on the 17th had some
24 placeholders in there, as the judge herself may have noted, as
25 well as the fact that the parties have raised a few issues

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1 between discussion among all probably do make sense to
2 incorporate in some fashion.

3 I certainly echo, though, Mr. Martin's comments as
4 well as actually Mr. Powell's that at a certain juncture, we
5 need to kind of end the quote, unquote haggling over the plan
6 and so finding some happy medium could be appropriate.

7 As I recommended at the outset, I believe that an
8 approach in which we could come back within two weeks, by
9 June 8th, with where we are on those pieces would allow the
10 parties to flesh out their positions, whatever it may be.
11 Certainly, everybody here was incredibly candid and frank with
12 where they all thought this may go and what should happen next.
13 And I think this may allow for that. So that would be my
14 suggestion to you, your Honor.

15 THE COURT: Ms. Werlwas has her hand up, so I'll call
16 on her first. And then it looked like Mr. Powell was beginning
17 to speak.

18 Ms. Werlwas.

19 MS. WERLWAS: Thank you, your Honor.

20 We wanted to address two things. And certainly, we
21 welcome discussions with the monitoring team about the
22 contemporaneous information that Ms. Friedberg mentioned and us
23 getting information of what is happening in the jails and
24 wanted to make clear that we do support the SDNY's request for
25 information and separately establishing indicators of success.

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1 I raised my hand to address the issue that the
2 commissioner and the City and the monitors had addressed
3 regarding barriers to relief. And I do so now because,
4 initially, we withheld those topics because of the agenda sort
5 of was set up differently, but in the discussions, we have all
6 addressed those and did want to respond to the City's assertion
7 and the monitor's framing about barriers very briefly because
8 we think it's essential to understanding what happens next.

9 We appreciate the monitor's and share the monitor's
10 identification of the issue of and the critical importance of
11 identifying barriers to relief and think the monitor astutely
12 identified some types of barriers. It's critical because in
13 our discussions with the plan, in our view, the City has been
14 unwilling to address the barriers that do exist. We want to
15 try to cut through some of the muck here today. First, I would
16 suggest that let's be honest about something that is one of the
17 principal things that we mean by the sometimes euphemism
18 barrier. And that is in great part the collective bargaining
19 laws and the civil service laws. Those are certainly not the
20 only legal barriers, constraints in which we all operate, but I
21 think it's fair to say, quite honestly, those are very
22 significant ones at this juncture of the case and given the
23 action plan in front of us.

24 And the City has asserted today that there are no
25 legal obstacles to implementing its action plan. And in a very

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1 narrow, technical sense, that is true, in our view, of most of
2 these provisions of the plan, precisely because they don't
3 require much, if any, action. When the only action required is
4 to create a plan, then of course the City has managerial
5 rights. It has managerial rights to create plans. The plan
6 states that the City will revise its sick leave policy. We
7 agree with the City, some such revisions would certainly not
8 implicate labor rights, but clearly others patently would.
9 This is not about speculation.

10 The sick leave policy is at the core of the
11 instability in the jails right now, as it has been the source
12 of massive staff absenteeism and understaffed posts. It is not
13 realistic to assume that making the dramatic and immediate
14 changes that are needed to get enough officers in the housing
15 areas to address the rampant absenteeism in this workforce,
16 changing the allocation of posts and significantly accelerating
17 what minimal employee discipline exists will be on consent of
18 the unions.

19 So the vagueness and, frankly, insufficiency of the
20 plan seems to be the only thing that saves it from collision
21 with the admittedly very gray area that is the scope of
22 collective bargaining agreements, which, for a very long time,
23 in our negotiations, up until this past week, the City has
24 identified as one of sources of its obstacles to implement
25 change.

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1 The concern and the reason that we shared with the
2 City several proposals to mitigate these collisions that we
3 think are very much ripe were designed to, in some way, to deal
4 with problem that we see in the plan, which is that the
5 prospect of labor and civil service conflict is distorting the
6 relief that is suggested. We think this is very clear in the
7 provision about facility leadership. The record undeniably
8 makes clear and the parties have been negotiating for months
9 about hiring external wardens and the barrier the City has
10 asserted for the longest time has been certain correction law
11 120 and other relevant laws. Yet, at the end of the day,
12 rather than take very reasonable suggestions of ways to address
13 those concerns have simply developed this inexplicably complex,
14 convoluted structure of dual reporting in the facilities.
15 That's what we mean by workarounds. And that is part of the
16 dynamic that we think will plague this plan going forward and
17 needs to be resolved now. It is the elephant in the room and
18 it is causing great harm if we do not address it right now.

19 And just the last, as I know time is brief, we would
20 add one other type of barrier to the monitor's list that we
21 think otherwise ably described the different kinds of barriers,
22 and that's the political barrier. And by that, one of the
23 fundamental problems we see with this action plan -- and it's
24 about it philosophically, not about wording -- is its reliance
25 upon hiring new people and external people, who are very much

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1 needed and the City would very much benefit from their
2 expertise to work for the department, yet what we have seen so
3 far is that -- as we saw with the firing of the disciplinary
4 manager -- that these individuals will serve at the will of the
5 New York City mayor and are subject to political controls on
6 their ability to implement reform. And by kicking the hardest
7 choices that are to be made down the line to these individuals
8 who are not independent of the administration, but who are
9 subject to the dissatisfaction of different constituencies, we
10 raise the prospect that much of this reliance on these people
11 will be for naught. And after they have -- they serve at will
12 and will be dismissed. And if they are, then we're back to
13 square one.

14 Those are the barriers we wanted to raise. We tried
15 to come up with solutions to work around those. We would
16 happily engage others, but we don't see any others on the table
17 that the City hasn't rejected already in resolving those
18 barriers to relief, and we think they're fundamental to the
19 ability of this plan to succeed.

20 THE COURT: Thank you.

21 Mr. Powell, did you wish to speak?

22 MR. POWELL: Yes, your Honor.

23 I guess if I could just set forth our position as to
24 what we would recommend or be agreeable for a path forward
25 here -- I know time is getting short -- it's just the SDNY's

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1 position, to be clear, the plan that was submitted is the
2 City's plan, that's their reform plan, that's how we view it.
3 The monitor was certainly very involved in crafting it, but
4 this is the City's plan of reform to fix the issues that have
5 been identified over and over again. In our view, we were
6 provided an opportunity to provide input, which we have done.
7 We have provided that input, that feedback to the City and to
8 the monitor. We think that the monitor and the City should
9 take that feedback and finalize their plan and submit it to the
10 Court as soon as possible. If it takes another couple weeks, I
11 guess it takes another couple of weeks. We thought we made it
12 very clear, we're not signing that and endorsing that plan as a
13 fix. We just can't be in a position to do that. There's going
14 to be a lot of operational stuff that's not in there.

15 So our proposal would be that that input be
16 considered. We're happy to have further conversations. We're
17 not trying to remove ourselves from the process. But that plan
18 be finalized and submitted to the Court and be so ordered. We
19 did provide a list of our thoughts on metrics and outcome
20 measures that we think should be included in that plan. I
21 believe we mentioned to the City that we had done that, but we
22 had not provided those metrics to them. We are happy to do so.
23 Because, again, we were providing input back to the monitor on
24 our thoughts. I think that that plan should include a series
25 of metrics that measure how they're doing on each of the items

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1 in that plan and how they're doing at protecting the safety and
2 well-being of inmates and staff.

3 What those metrics are, the monitoring team has far
4 more expertise than I do in that. We've thrown out our ideas.
5 We'll circulate them after this call. And our recommendation
6 would be that the plan include those metrics, that those
7 metrics be included in the periodic reports that the monitor
8 provides on a regular basis to the Court and that that be our
9 path forward and that that be so ordered by the Court.

10 With respect -- final point -- with respect to the
11 barrier issue, what I hear the City to be saying, and I just
12 want it to be clear for everyone here, is that they do not
13 foresee any legal, contractual, regulatory, state law barriers
14 in reforming this department and bringing it into compliance
15 with the consent decree and the remedial orders.

16 Legal Aid society raised an issue about there's no
17 problem with coming up with a plan, that that wouldn't conflict
18 with law. That's not what I'm hearing them say. If what I'm
19 hearing is incorrect, they should clarify. But what I am
20 hearing is their take, based on their own labor experts, is
21 that there is no legal obstacle to implementing all of the
22 steps and reforms that they think are necessary to bring the
23 system into compliance with the Court's orders. And if that's
24 correct, we can't second guess that, right. They have their
25 labor lawyers, they're making a determination.

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1 We would still request that and think that the plan
2 should at the very least include some procedural mechanism that
3 if barriers are identified in the future, that there be a
4 mechanism in place, that if the monitor or the City determines
5 there are potential legal obstacles that need to be dealt with,
6 that they promptly bring that to the attention of the Court and
7 the parties so that it can be dealt with through a potential
8 court order or otherwise. That's the very least that I think
9 need to be in there to give the monitor some comfort that if
10 these barriers are out there that they be rapidly and promptly
11 dealt with.

12 So that would be our proposal, again, that the plan be
13 finalized with our input, that it be submitted to the Court as
14 soon as possible, that it include metrics that are agreed upon
15 between the monitor and the City with our input and that it
16 include some mechanism for barriers that are identified in the
17 future to deal with. And I think that is our position after
18 hearing all parties today and the monitor.

19 THE COURT: Thank you.

20 I do want to give Ms. Joyce and the commissioner an
21 opportunity to respond directly to Mr. Powell's question about
22 barriers, which goes further than the question that I asked.

23 Is it your position that there are no legal,
24 contractual, regulatory or state law barriers that you perceive
25 coming into compliance with the consent decree via the

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1 proposals that you have made as to these core issues as a
2 starting point?

3 MS. JOYCE: Yes, your Honor, that is accurate.

4 Everything that we have agreed to in the action plan,
5 we believe that there are no legal impediments to us fulfilling
6 our obligations under the action plan.

7 THE COURT: Thank you.

8 So what I would propose, taking up on what I've heard
9 from Mr. Martin, Mr. Powell, Ms. Friedberg and Ms. Werlwas, is
10 that you take, under the monitor's leadership, two more weeks
11 to develop a further fleshed out proposed order that includes
12 metrics and mechanisms for metrics, because I don't expect you
13 to be able to identify each and every metric that would
14 necessarily be helpful here. And I don't want this process to
15 take too long. But it does certainly make sense for there to
16 be metrics for realtime, concrete disclosure and measurement of
17 progress. The proposed order should also include any further
18 clarification of the language and expansion or change of the
19 language that the proponents of the proposed order believe
20 necessary or appropriate in the circumstances.

21 In the meantime, the department and the City must
22 continue to proceed apace in implementing the changes that are
23 being proposed and contemplated. This isn't a time out, but
24 this is a matter of defining what will be court-imposed
25 standards. And as they say, the proof of the pudding is in the

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1 eating, and so some more pudding making and some opportunities
2 for testing and tasting along the way will be necessary, I
3 think, to gain the confidence of the necessary stakeholders and
4 of the Court. So that must be part of the process as well.

5 So there should be discussions. There should be a
6 submission to the Court by June 8th.

7 Now, it may be that there is some explanatory document
8 in identification of further issues at that time, but what can
9 be presented to be so ordered must be. To the extent that the
10 plaintiffs and the government believe that the proposal is so
11 inadequate -- and I hope this doesn't happen -- but if they
12 believe that it is so inadequate that we should have a third
13 parallel track of the development of motion practice seeking
14 particular relief from the Court and explaining to the Court
15 the factual and legal basis on which the particular relief is
16 sought, then a proposed timetable for and description of such
17 contemplated motion practice should also come in on June 8th.
18 I'm hoping that that won't be necessary. But it would be
19 better, in my view, at this point, to have something besides
20 general conceptual notions of there being a path for everyone
21 to focus on in addition to the proposed action plan.

22 Ms. Joyce, you have your hand up.

23 MS. JOYCE: Thank you, your Honor.

24 I know that the deputy monitor and the Court suggested
25 June 8th, but could we have until June 10th for the submission

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1 to the Court. I think those extra few days would be critical
2 for us in a submission.

3 THE COURT: So that would be the Friday of that week?

4 MS. JOYCE: Yes, your Honor.

5 THE COURT: Is there any objection by the monitor or
6 anyone else to the Friday?

7 MS. FRIEDBERG: Your Honor, can I just ask -- this is
8 why these dates are always so troubling, if it could be --
9 actually, nevermind, leave it the 10th. I was going to move
10 the date. Nevermind, leave it the 10th. No objection from me.

11 THE COURT: June 10th is the submission date. And
12 that submission should also include a proposal for reporting.
13 And to the extent there is going to be a request for another
14 conference in the near term, that should be included in the
15 submission. And chambers can be alerted by the monitor as well
16 to the extent that dates need to be worked out.

17 So I have described what I am looking for here on the
18 record. So to bottom line it, by June 10th, a submission of a
19 fleshed out proposed order to include metrics. And should a
20 party or parties desire a proposed timetable for motion
21 practice as well with any further explanatory information,
22 affidavit in support, declaration in support of the order or
23 request for further conference or court action that may be
24 deemed necessary by the proponents of the order, that to be
25 submitted by close of business on June 10th. And if you expect

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1 it to be contested, give me a proposed schedule for any further
2 submissions that you see as essential for my consideration
3 before acting on the proposed order.

4 Ms. Werlwas, your hand is up.

5 MS. WERLWAS: Very quickly, your Honor, our team was
6 conferring and looking at calendars while this discussion was
7 happening, and we would request that the original date of the
8 8th remain. The 9th and the 10th are both extraordinarily
9 challenging for us, but the 8th would work.

10 MS. JOYCE: Your Honor, the 6th and the 7th are
11 challenging for us, and it's the City and the monitoring team
12 that are doing the bulk of the heavy lifting, so we really
13 would ask for June 10th, if that's acceptable to the Court.

14 THE COURT: It will stay June 10th. You will need to
15 work out your communications. It sounds like there's going to
16 be a lot of pressure on the Wednesday of that week, but I leave
17 it to you to work out the specifics.

18 Ms. Friedberg.

19 MS. FRIEDBERG: Your Honor, just one clarification
20 with respect to what you're looking for in the submission of
21 the 10th, I know that Mr. Powell had also raised one question
22 with at least an issue of whether the action plan addresses the
23 prospective barrier requirements. I did not hear in your list
24 of items whether or not that was something you wanted addressed
25 by June 10th or not. I would certainly submit that that should

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1 be something that should be considered, but certainly that's up
2 to you, your Honor. I just wasn't sure if that was intentional
3 or not to remove that request that he made.

4 I did not intentionally remove that. I think that you
5 should endeavor to include a provision that provides some
6 mechanism. Now, whether that mechanism is a contemplated
7 submission to the Court that's not fleshed out in all of its
8 mechanics or not, I can't say. But we certainly shouldn't lose
9 sight of that point, and you should endeavor to include as
10 meaningful a provision in that respect as you can in the
11 timetable.

12 MS. FRIEDBERG: Thank you for the clarification, your
13 Honor.

14 THE COURT: Thank you all for your undertakings and
15 for your work. As many people have said, we are ultimately
16 about results here that achieve reform and that, in the very
17 near term, provide greater safety for those in custody,
18 particularly at Rikers and those who work at Rikers. So I
19 thank you for what you have brought before me today and for the
20 very hard work that you are going to be doing over the next two
21 weeks. I look forward to that further progress in this very,
22 very crucial undertaking. And I thank the City for proposing
23 these new structures and approaches and for the steps that have
24 been taken, and I want to see the results. I am hoping that we
25 will all see results that are meaningful.

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1 Ms. Friedberg, you have your hand up again.

2 MS. FRIEDBERG: Your Honor, this is embarrassing. I
3 don't know how to turn it off.

4 THE COURT: Just hit the same button and it goes off.

5 MS. FRIEDBERG: I tried to do that a few times and
6 failed. Thank you.

7 THE COURT: That's fine.

8 So is there anything further that we need to take up
9 in the two minutes or so that I have left before we have to
10 call this closed?

11 MS. WERLWAS: No. Thank you.

12 THE COURT: Thank you. Stay safe, be well, work hard.
13 And again, thank you.

14 (Adjourned)

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